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**Cellco Partnership d/b/a Verizon Wireless and Communications Workers of America District 9, AFL-CIO; Communications Workers of America, AFL-CIO.**

**Airtouch Cellular and Communications Workers of America District 9, AFL-CIO; Communications Workers of America, AFL-CIO.** Cases 21–CA–075867, 21–CA–098442, and 21–CA–115223

July 22, 2020

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

On May 15, 2020, the National Labor Relations Board issued an Order Remanding and Notice to Show Cause in which the Board severed and retained two complaint allegations affected by the Board’s decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019).<sup>1</sup> Specifically, the two retained issues are whether the Respondents violated Section 8(a)(1) of the Act by maintaining Section 1.6 and Section 3.4.1 of their 2014 Code of Conduct, both of which restrict employees’ use of the Respondents’ IT systems.<sup>2</sup>

In *Caesars Entertainment*, the Board overruled *Purple Communications, Inc.*, 361 NLRB 1050 (2014), and announced a new standard that applies retroactively to all pending cases in which it is alleged that, as here, an employer violated the Act by maintaining rules restricting the use of its IT resources for nonwork purposes. *Id.*, slip op. at 1–9. The *Caesars Entertainment* standard states, in relevant part, that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination.” *Id.*, slip op. at 8. Under this limited exception, employees are permitted to access their

employer’s IT resources for nonbusiness use, even absent discrimination, where the employees would otherwise be deprived of any reasonable means of communicating with each other. Because the parties did not previously have an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case, the Board issued a notice to show cause why the retained allegations should not be remanded to the judge for further proceedings in light of *Caesars Entertainment*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

The Respondents, the General Counsel, and the Charging Party filed responses to the notice to show cause, and the Respondents also filed a reply. The Respondents oppose remand, asserting that it is unnecessary because the judge had dismissed these allegations under *Register Guard*, 351 NLRB 1110 (2007), precedent that the Board reinstated in *Caesars Entertainment*. The General Counsel asserts that the case should be remanded to the judge for further processing, without offering any explanation in support of this position. The Charging Party supports remand in order to litigate whether the Respondents have legitimate business justifications for the rules restricting use of their IT systems.<sup>3</sup> In their reply, the Respondents note that neither the General Counsel nor the Charging Party have contended in their responses that the Respondents’ IT systems are employees’ only reasonable means of communication or that they would put forth any evidence or argument in support of that position if the case were remanded.

We agree with the Respondents that remand is not appropriate here and that further proceedings before the judge would serve no purpose.<sup>4</sup> Because there is no indication in the record that the Respondents’ employees do not have access to other reasonable means of communication, and no party contends that the Respondents’ IT systems furnish the only reasonable means for employees to communicate with one another, we find that the Respondents did not violate Section 8(a)(1) by maintaining Sections 1.6 and 3.4.1 of their 2014 Code of Conduct. See *T-Mobile USA, Inc.*, 369 NLRB No. 90, slip op. at 1 (2020).

<sup>1</sup> The rest of the allegations were remanded to the administrative law judge for further proceedings.

<sup>2</sup> Sec. 1.6 prohibits “the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute.” Sec. 3.4.1 prohibits employees from using the Respondent’s email, instant messaging, Intranet, or Internet systems to transmit “offensive” or “harassing” content and “chain letters,” “unauthorized mass distributions,” and “communications primarily directed to a group of employees inside the company on behalf of an outside organization.”

<sup>3</sup> We find no merit in the Charging Party’s unexplained request to recuse all Board members from this case. Insofar as the Charging Party objects to Member Emanuel’s participation in any case applying *Caesars Entertainment*, Member Emanuel addressed his participation in the

*Caesars Entertainment* decision itself. See 368 NLRB No. 143, slip op. at 3 fn. 11; see also *Verizon Wireless*, 369 NLRB No. 108, slip op. at 1 fn. 3 (2020).

<sup>4</sup> The Charging Party’s request for a remand in order to litigate whether the Respondents have legitimate business justifications for the rules restricting use of their IT systems is without merit. In *Caesars Entertainment*, the Board balanced employees’ NLRA rights and employers’ interests to establish generally that employers may lawfully restrict employees’ nonbusiness use of their IT systems, unless the restriction is discriminatory or there are no other reasonable means of communication for the employees. The Board does not conduct this balance anew in each case.

## ORDER

The severed and retained complaint paragraphs 5(a) and 6(c) are dismissed.

Dated, Washington, D.C. July 22, 2020

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

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John F. Ring, Chairman

(SEAL) NATIONAL LABOR RELATIONS BOARD